

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of)

DEPARTMENT OF JUSTICE)
IMMIGRATION AND NATURALIZATION)
SERVICE)
WASHINGTON, D.C.)

and)

NATIONAL BORDER PATROL COUNCIL)
AMERICAN FEDERATION OF GOVERNMENT)
EMPLOYEES, AFL-CIO)

Case No. 91 FSIP 78

DECISION AND ORDER

The National Border Patrol Council, American Federation of Government Employees, AFL-CIO, (Union or Council), filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under section 7119 of the Federal Service Labor-Management Relations Statute (Statute) between it and the Department of Justice, Immigration and Naturalization Service, Washington, D.C. (Employer or Service).

After investigation of the request for assistance, the Panel determined that the impasse concerning proposed changes to the Employer's Relocation Services Program be resolved through an informal conference between the parties and Staff Associate Ellen J. Kolansky. The parties were advised that if no settlement were reached, Mrs. Kolansky would notify the Panel of the status of the dispute, including the parties' final offers, and her recommendations for resolving the matter. Following consideration of this information, the Panel would take whatever action it deemed appropriate to resolve the impasse including the issuance of a binding decision.

Mrs. Kolansky met with the parties on March 1, 1991, but the issue at impasse was not resolved. During the conference, the parties were given the opportunity to submit written statements in support of their final offers. Only the Union chose to do so. Mrs. Kolansky reported to the Panel based on the record developed by the parties, and the Panel now has considered the entire record, including her recommendations for settlement.

BACKGROUND

The Employer enforces the immigration laws under authority delegated by the Attorney General. The Union represents approximately 3,500 employees of the Border Patrol who work as uniformed law enforcement officers, agents, and detention enforcement officers. They carry firearms and have authority to arrest, seize drugs, and stop illegal immigration at the borders. A national, multi-unit agreement was originally negotiated in 1976. The parties have stipulated that it expired on January 22, 1979. Although the parties have negotiated for a successor agreement, its implementation has been delayed pending resolution of related matters currently before the Court of Appeals for the D.C. Circuit.

The Relocation Services Program, available to Border Patrol employees since 1985, is a home purchase program for employees who accept new positions at different geographic locations within the Service. It is an aid for retaining employees, many of whom are stationed at small outposts in remote areas. Currently, homes become eligible for purchase by the relocation service as soon as employees receive Form G-119 offering a merit promotion or lateral transfer. In addition, employees are not required to market their homes privately. Following cost-cutting recommendations by the Inspector General (IG) of the Department of Justice, the Employer announced program modifications. In the future, to capture potential sales opportunities, employees would have to market their homes through a realtor before becoming eligible to accept an offer under the program. The change is expected to reduce significantly the cost of the program to the Government.

The parties agree that employees should have 2 weeks to indicate that they wish to participate in the program, and, normally, would market their homes for 60 days before accepting the relocation service's offer. They were unable to agree, however, to provisions for employees required to report to their new locations in fewer than 60 days.

ISSUE AT IMPASSE

The sole issue in dispute concerns how long an employee must privately market a residence before accepting a purchase offer from the relocation service.

1. The Employer's Position

Under the Employer's proposal, essentially acceptance of the relocation service's offer would be predicated on an employee's private marketing of the residence for 60 days. In circumstances where an employee's request for additional time

to report for work at the new location is denied, only a 45-day marketing period would be required. Successful private marketing of a residence, the Employer argues, would reduce its costs in a particular transaction by an average of \$20,000. Facilitating such sales by requiring a substantially longer minimum private marketing period would increase the likelihood of savings. In this regard, sales efforts by employees, especially during the first 30 days when a home is most likely to sell, are critical. Encouraging such efforts is in accordance with recommendations by the IG. Furthermore, benefits under the program to employees, including those whose homes are in remote locations, would continue after the expiration of the 60-day period. Moreover, availability of the program would encourage employees to remain with the Border Patrol, thereby supporting both retention and career development goals.

2. The Union's Position

Basically, the Union proposes that employees "may not accept the relocation service's offer to purchase their residence until it has been on the market for 60 days, or until the day prior to their actual transfer, whichever occurs first." It asserts that savings under the Employer's proposal are speculative because real estate sales are sluggish in the remote areas where most employees are located. As a result, employees often may have to shoulder additional mortgage payments after a move, while the private marketing period proceeds. In the end, despite sacrifices by employees, the Employer would save nothing if the residence remains unsold. In addition, employees regularly are required to report to new duty stations on short notice because the Employer's planning is poor or emergencies arise. It questions why employees should be made to bear the burden for such mistakes. Furthermore, it finds no comfort in the Employer's assurance that it would adhere whenever possible to the IG's associated recommendations for extending reporting deadlines (from 60 to 90 days) to permit a full marketing effort prior to the move.

CONCLUSIONS

Having considered the evidence and arguments in this case, we conclude that the parties should adopt the Union's proposal. We are persuaded that its terms would not significantly reduce the savings sought by the Employer from home sales during the private marketing period. While private marketing would be mandated during the 60-day predeparture period, an employee required to report to the new location sooner could accept an offer 1 day prior to the move. In such circumstances, the employee would not be required to shoulder additional financial burdens after the move. Moreover, since the Employer maintains significant control over the

determination of reporting dates, we also are persuaded that it is in the best position to coordinate dates to permit a sufficiently long private marketing period prior to an employee's departure. Finally, the Union's proposal is consistent with the recommendations of the IG, and would provide a benefit to encourage the retention of employees.

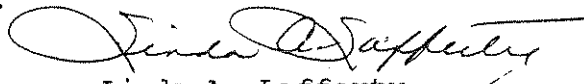
ORDER

Pursuant to the authority vested in it by section 7119 of the Federal Service Labor-Management Relations Statute and because of the failure of the parties to resolve their dispute during the course of proceedings instituted pursuant to section 2471.6(a)(2) of the Panel's regulations, the Federal Service Impasses Panel under section 2471.11(a) of its regulations hereby orders the following:

The parties shall adopt the Union's proposal which reads:

An employee desirous of participating in the relocation services program shall market his or her residence no later than two (2) weeks following receipt of authorization to relocate (Form G-119), and may not accept the relocation services company's offer to purchase their residence until it has been on the market for sixty (60) days, or until the day prior to their actual transfer, whichever occurs first.

By direction of the Panel.



Linda A. Lafferty
Executive Director

June 12, 1991
Washington, D.C.